UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

Distr.
GENERAL

E/CN.15/1994/11
21 April 1994

ENGLISH
ORIGINAL: SPANISH

COMMISSION ON CRIME PREVENTION
AND CRIMINAL JUSTICE
Third session
Vienna, 26 April - 6 May 1994
Item 7 of the provisional agenda

PREPARATIONS FOR THE NINTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

Note verbale from the Embassy of the Republic of Argentina of 18 April 1994 to the United Nations Office at Vienna

The Permanent Mission of the Republic of Argentina presents its compliments to the United Nations Office at Vienna, Crime Prevention and Criminal Justice Branch, and, pursuant to the request submitted on 16 March 1994 by the Minister of Justice of the Republic of Argentina, Dr. Jorge Maiorano, has the pleasure to request the Secretariat to circulate to the Commission on Crime Prevention and Criminal Justice at its third session as an official document of the session, under item 7 of the provisional agenda entitled "Preparations for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders", the document attached hereto, entitled "Draft minimum rules of the United Nations for the administration of criminal justice", which was prepared by an Expert Commission in collaboration with the Crime Prevention and Criminal Justice Branch.

The Permanent Mission of the Republic of Argentina takes this opportunity to reiterate to the United Nations Office at Vienna, Crime Prevention and Criminal Justice Branch, the assurance of its highest esteem.

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PREAMBLE

The Expert Commission met in Palma de Mallorca, holding four working sessions which took place on 23, 24 and 25 November 1990, 3, 4 and 5 May 1991, 5, 6, 7 and 8 September 1991, and 14, 15 and 16 February 1992; the sessions were convened at the invitation of the Advisory Board to the Presidency of the Balearic Government with the cooperation of the Crime Prevention and Criminal Justice Branch of the United Nations Office at Vienna.

PROCEEDING FROM the basic fundamental rights which, in consideration for human dignity, were proclaimed in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and other international documents,

CONVINCED that the effective exercise of those rights requires their formulation in the form of more specific rules,

NOTING that criminal justice is an instrument of power of States that of necessity essentially affects individual rights,

BEARING IN MIND that criminal proceedings may be directed both against the guilty and the innocent and that they may also affect the interests of third parties,

CONSIDERING the urgent need to incorporate into the set of minimum rules already adopted by the United Nations those which should govern criminal procedure,

SEEKING to harmonize the requirements of efficient criminal justice with effective consideration for the guarantees of persons whose rights are affected by criminal proceedings,

RECOMMENDING that the conclusions of its work should be called "Mallorca Rules",

PROPOSES the adoption of the following United Nations Minimum Rules for procedure in criminal matters.

DRAFT MINIMUM RULES OF THE UNITED NATIONS FOR THE ADMINISTRATION OF CRIMINAL JUSTICE

(A) General principles of procedure

1. (1) Prosecution for an offence, in accordance with the law, shall be the sole competence of the State.

(2) National legislations shall regulate to what extent criminal prosecution shall depend on private petition and shall be endowed with the function of the indictment of private persons. In the latter case, the State shall make the necessary means available, at least in the case of the victim, for the exercise of this right.

(3) Inasmuch as the function of indictment is incumbent upon State authorities, mechanisms for judicial control shall be established on the assumption that the exercise of criminal action by them may be omitted or rejected.

2. (1) The investigatory and prosecutive functions shall be strictly separated from the function of judgement.

(2) The police and the officials carrying out the duties of investigation in criminal proceedings shall in terms fo function come under the Public Prosecutor's Office or the judiciary and courts.

3. When the public prosecutors are invested with discretionary powers, directives shall be established, by law or in published statues, to promote the fairness and consistency of the criteria adopted for indictment, criminal action or the dropping of charges. 1*

4. (1) Prosecutions and findings in criminal matters shall always be the responsibility of independent judges subject solely to the law.

(2) The courts shall be impartial. National legislations shall establish the grounds for non-participation and challenge. More especially, no one shall be part of a court who has previously been involved, in any manner, in another function or at another instance relating to the same case; or anyone who has participated in a ruling that was later nullified by a higher court.

(3) Everyone shall have the right to be judged by the ordinary courts of justice in accordance with legally established procedures.

4. The trial, in the case of serious offences, shall fall within the competence of qualified courts and, when dealing with minor offences or misdemeanors, it may be the competence of single-person courts.

(B) Principles governing legal proceedings

5. The public authorities shall collaborate, in criminal matters, with the judicial authority and provide it with any information it requests.

6. All criminal proceedings shall be initiated without undue delay. States shall establish this obligation in their legislations.

(C) Rights of the defendant

7. Rulings which affect the personal or procedural rights of the defendant may not be adopted without a previous hearing. When the ruling has affected one of these rights, the judge or the court giving it shall examine it within the shortest possible time in order to alter it, if there are grounds to do so.

8. (1) The person who has come under suspicion by the prosecuting authorities shall not be interrogated without being advised in advance that he has the right to have the assistance of a lawyer or to remain silent or to refrain from making statements detrimental to himself.

(2) He shall also have the right to an interpreter without cost at all stages of the procedure.

9. (1) The defendant has the irrevocable right to make a voluntary statement or to remain silent with regard to the acts with which he is charged. He shall not be constrained or induced to confess by means of violence, threat, deception, reward or any other similar device.

(2) National legislations shall provide for criminal and disciplinary sanctions against officials who violate the above principle.

10. Evidence obtained through transgression of the rights embodied in rules 8 and 9 shall not be used during the proceedings.

11. (1) Without prejudice to his right to defend himself, the defendant, at all stages of the proceedings, and the convicted person during the execution of the sentence, shall have the right to a lawyer of his own free choice. Equally, the defendant lacking funds shall have the right to the assistance of a lawyer.

(2) In criminal proceedings in which the legal outcome might be, directly or indirectly, the deprivation of freedom, participation by a lawyer shall be necessary.

(D) Right of defence

12. (1) The Counsel for the Defence may advise the defendant at every phase of the proceedings.

(2) No examination of the defendant may be taken into consideration when the Counsel for the Defence has not been able to advise him whether it is best to make a statement or not, or to warn him of the incriminating significance of his statements.

(3) Only by a judicial ruling stating the grounds and for a set time shall the right of the accused to communicate with his Counsel be restricted. Such a ruling shall be based on the law and cover special circumstances involving a specific risk to the safety of people that devolves from the association of the defendant with a violent criminal organization.

(4) The confidentiality of communications between the accused and his Counsel within the professional relationship shall be guaranteed.

(5) Evidence obtained through violation of the right of defence is void and, as a result, may not be used as such during the proceedings. 2*

13. The Counsel for the Defence has the right to take part in the investigations in which the presence of the accused is required. He may also submit evidence and take a part in the hearing of it, by himself, or in the case of specialized evidence, through an expert. In the event of rejection of the demand that an item of that evidence be considered, the Defence shall possess the right of appeal.

14. (1) The Counsel for the Defence is authorized to take cognizance of the acts, documents and other items of evidence at the disposal of the court or those which may come into its possession.

(2) Cognizance of the acts, documents and other items of evidence may be refused, prior to the indictment being officially made, when the purpose of the investigation might thereby be jeopardized.

15. States shall guarantee lawyers the free and independent practice of their professional activity in relation to defence of the rights of the accused.

(E) Coercive measures

16. The restrictive measures on rights are intended to safeguard the aims of the proceedings. They are designed, in particular, to guarantee the presence of the defendant and the acquisition and preservation of the evidence.

17. In relation to the restrictive measures on rights, the principle of proportionality shall prevail, with special consideration for the gravity of the imputed offence, the penal sanction and the consequences of the coercive measure adopted.

18. (1) Only a judicial authority outside the investigation may impose procedural measures which entail restriction on the rights of the person. Should this not be the case, provision shall be made for recourse to a prompt appeal to a higher court. Such shall apply especially to preventive detention.

(2) Measures adopted by the Office of the Public Prosecutor and the police which involve direct infringement of fundamental rights of the person shall be authorized judicially, at the level of the Public Prosecutor referred to.

(3) Only in emergencies, explicitly provided for by law, may the Public Prosecutor or the police adopt such measures and in such a case they must be judicially approved within the shortest possible time.

19. (1) Detention shall only be ordered when there are justified suspicions that the person has been involved in an offence.

(2) Any person detained on suspicion of having committed an offence shall be brought before the judicial authority as soon as possible. This authority shall, after the hearing, immediately make a decision with regard to his liberty. States shall establish in their national legislations a maximum limit for the duration of detention, which shall never exceed 72 hours.

(3) Every detainee has the right to communicate with a lawyer of his choice as soon as possible. In any event, his detention shall be communicated immediately to his family or persons enjoying his trust.

(4) The detainee may demand, through the procedure of habeas corpus or another of similar significance, that he be brought immediately before the competent judicial authority. He may likewise bring in a third party in his favour.

20. (1) Preventive detention shall not be of the nature of advance punishment and may be only imposed as ultima ratio. It may only be ordered in cases where there is proved to be a specific risk of escape by the defendant or of the destruction, disappearance or tampering with evidence.

(2) Preventive detention shall only be ordered when the sanction that may predictably be imposed is deprivation of freedom for more than two years. Against this ruling there shall be appeal to a higher court. In any event, the statutes of States shall establish maximum limits for the duration of preventive detention.

(3) A person subjected to preventive detention shall be able to communicate with his Counsel whenever considered necessary.

(4) Preventive detainees shall be kept separate from convicted prisoners.

21. No detainee or prisoner shall be exposed to cruel, inhuman or degrading treatment. 3*

22. (1) If the defendant shows signs of mental derangement and the offence is not such as to call for preventive detention, the judge may, following a specialist's report, order his internment in a psychiatric clinic, if essential, over a period of no longer than six weeks, for the purpose of determining his mental state.

(2) In other cases, the internment shall not be necessary unless the defendant himself, with a capacity for doing so, should agree to such or the members of his family should authorize it.

23. (2) Any bodily intervention shall be prohibited unless the person concerned gives his assent. However, when there is no other way to detect the assumed offence, the judicial authority may agree to it in view of the gravity of the offence and the absence of any risk to the health of the person concerned.

(3) Bodily intervention shall always be carried out by a medical professional in accordance with the lex artis and with maximum respect for the dignity and privacy of the person.

24. Admission to and registration in a closed institution shall always require judicial authorization in conformity with the law and be duly substantiated within the framework of rules 16 and 17, except in cases of serious and flagrant offences.

(F) Oral proceedings

25. (1) The defendant has the right to oral proceedings.

(2) The hearings shall be public, except for cases recognized in the international instruments on the protection of human rights.

26. Oral proceedings shall not be instituted against a defendant who is involuntarily absent. If a serious offence is involved, his presence shall be imperative.

27. In oral proceedings there shall be full submission of all evidence tending to prove the imputed acts as well as evidence helping to demonstrate the innocence of the accused.

28. The entire oral proceedings shall be held of necessity in the presence of those members of the court who will pass the judgement.

29. (1) All evidence shall be submitted to the examining court.

(2) If the verification of a fact is based on one person's perception, the latter shall be examined during the oral proceedings. This examination may not be replaced by reading out a document or declaration written beforehand. National laws shall establish the exceptions to that principle by virtue of impossibility or serious difficulty in their reproduction. In such cases use may be made during oral proceedings of statements recorded beforehand, whenever such has taken place with the collaboration of the Counsel for the Defence and an opportunity is ensured to challenge the evidence given by other parties (principle of contradiction).

(3) The defendant and his Counsel shall have the right to question the witnesses. 4*

30. The expert evidence shall be submitted by impartial, objective and independent experts.

31. (1) The Counsel for the Defence shall make his final plea after the charges are brought.

(2) The accused shall have the right to the final word.

32. The defendant shall have right to presumption of innocence.

33. (1) Judges shall freely evaluate the evidence in accordance with logic and experience. In cases of uncertainty the judge shall apply the principle of in dubio pro reo.

(2) No consideration shall be given to evidence obtained illicitly in a direct or indirect manner through violation of fundamental rights. Infringement of this prohibition shall incur the nullity of the full right.

(3) In exercising the freedom to evaluate the evidence, judges shall bear in mind, with regard to the assumption of witnesses based on hearsay, retracted statements and similar situations, that is only with other evidence corroborating such testimony that a condemnatory judgement may be passed.

34. Reasons shall be given for the sentence passed, with explicit indication of the evidence underlying it and the legal provisions applicable. Similarly, the sentence shall be worded in a manner comprehensible to those who take part in the proceedings.

(G) Appeals

35. Any person convicted shall have the right to appeal against the sentence before a higher court.

36. The exercise of the right to appeal before a higher court shall preclude the possibility that the person making the appeal, as a result of it, should be caused harm in his circumstances.

37. During the investigation or preliminary judicial proceedings appeal shall be established against all judicial measures affecting the rights to freedom, property and privacy. The rejection of such appeals shall not preclude periodic resubmission as long as the restrictions on the rights referred to exist.

38. Firm convictions based on an error due to ignorance of facts proving the innocence of the convicted person shall be subject to challenge.

39. States shall seek to establish legal systems for reparation when there are assumptions of judicial error and malfunctioning of the administration of justice.

(H) The victim

40. During the preliminary investigation the victim and parties injured through the offence shall be given the assistance they need.

41. States shall adopt the necessary measures to guarantee humane and dignified treatment of the victims and injured parties.

42. The victims and parties injured through the offence shall have the right to be heard and to be assisted by a lawyer, who may in serious cases act ex officio.

43. States are recommended to set up funds for reparations to the injured parties or victims of an offence, such as the adoption of measures ensuring better protection of the rights of victims and injured parties in the criminal proceedings.

(I) Suggestions for States

44. States should make possible access to international courts which guarantee the legality of sentences passed and respect for the fundamental rights of the citizen.

45. States shall promote the establishment of an international court to protect the rights proclaimed in these minimum rules and should seek to put into effect the decisions adopted by it or other already existing international courts.

46. States shall see to it that duly trained professionals are available for the administration of justice.